

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JUAN JERONIMO-PABLO,

Petitioner,

Y.

A. NEIL CLARK,

## Respondent.

CASE NO. C07-2045-MJP-JPD

## REPORT AND RECOMMENDATION

## I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Juan Jeronimo-Pablo, proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, arguing that “the \$5,000 bond imposed on him is excessive and violates his eighth amendment for release on reasonable bond.” (Dkt. 6). Petitioner requests that the Court issue an order releasing him under house arrest or reducing his bond to \$1,500. (Dkt. 6). Respondent has moved to dismiss, arguing that petitioner is properly detained without bond pending the resolution of his Petition for Review in the Ninth Circuit Court of Appeals. (Dkt. 11).

Having carefully reviewed the entire record, I recommend that petitioner's habeas petition (Dkt. 6) be DENIED and respondent's motion to dismiss (Dkt. 11) be GRANTED.

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1                   II. BACKGROUND AND PROCEDURAL HISTORY

2                   Petitioner is a native and citizen of Guatemala who entered the United States at  
3 Brownsville, Texas without inspection on or about July 1, 2005. (Dkt. 13 at L82, L84). On  
4 August 9, 2005, petitioner was arrested by ICE at his home in Shelton, Washington. (Dkt. 13 at  
5 L5). ICE served petitioner with a Notice to Appear, charging him with removal for being  
6 present in the United States without being admitted or paroled, in violation of Section  
7 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”). (Dkt. 13 at L2). ICE set bond  
8 in the amount of \$5,000. (Dkt. 13 at L4). Petitioner did not post bond and remained in ICE  
9 custody.

10                  On December 6, 2005, an Immigration Judge (“IJ”) denied petitioner’s applications for  
11 asylum, withholding of removal, and protection under the Convention Against Torture, and  
12 ordered him removed to Guatemala. (Dkt. 13 at L79). Petitioner appealed the IJ’s decision to  
13 the Board of Immigration Appeals (“BIA”), who affirmed the IJ’s decision and dismissed the  
14 appeal on March 24, 2006. (Dkt. 13 at R196).

16                  On April 24, 2006, petitioner filed a Petition for Review and a motion for stay of  
17 removal with the Ninth Circuit Court of Appeals. *Jeronimo-Pablo v. Gonzales*, Case. No. 06-  
18 72157 (9<sup>th</sup> Cir. filed April 24, 2006). Under Ninth Circuit General Order 6.4(c)(1), this caused a  
19 temporary stay to automatically issue. Petitioner’s petition for review remains pending in the  
20 Ninth Circuit.

21                  On October 31, 2006, while his Petition for Review was pending, petitioner jointly filed  
22 a Petition for Writ of Habeas Corpus with petitioner Genaro Escalante-Calmo. (See *Escalante-*  
23 *Calmo v. Clark*, Case No. C06-1575, Dkt. 1). The Court subsequently bifurcated the action,

1 and the two habeas cases proceeded as separate actions. (See *Escalante-Calmo v. Clark*, Case  
 2 No. C06-1575-RSL, Dkt. 4; *Jeronimo-Pablo v. Clark*, Case No. C06-1606-RSL, Dkt. 3).

3 On February 2, 2007, ICE issued a Notice to Alien of File Custody Review, informing  
 4 petitioner that his custody status would be reviewed on or about February 15, 2007, and that he  
 5 could submit any documentation he wished to be considered in support of his release prior to  
 6 that date. (Dkt. 13 at R305-06). Despite being advised of his right to do so, petitioner did not  
 7 submit any materials in support of his release. The ICE reviewing officer recommended that  
 8 petitioner remain in custody, stating,

9 JERONIMO has no known criminal history in the United States and does not  
 10 appear to be a danger to the community. However, JERONIMO has not provided  
 11 any evidence of community ties or family-members in the United States, or any  
 12 information as to where he might live and who would support him if released.

13 Moreover, JERONIMO has lived illegally in the United States for over two years  
 14 and only came to the attention of the government when he was encountered by  
 15 ICE agents during a fugitive operation. JERONIMO has presented no favorable  
 16 factors suggesting he would not pose a flight risk if released. Finally, JERONIMO  
 17 is a national of Guatemala, a country that immediately issues travel documents.  
 18 Absent the stay of removal ordered by the 9<sup>th</sup> Circuit, JERONIMO would  
 19 immediately be removed to Guatemala.

20 In light of the above, the reviewer recommends that JERONIMO be continued in  
 21 detention pending the outcome of the 9<sup>th</sup> Circuit PFR.

22 (Dkt. 13 at R313). On February 16, 2007, ICE Field Office Director A. Neil Clark followed the  
 23 recommendation and informed petitioner that he would continue to be detained “pending the  
 24 result of [his] appeal before the Ninth Circuit Court of Appeals.” (Dkt. 13 at R311).

25 On April 30, 2007, Magistrate Judge Monica J. Benton issued a Report and  
 26 Recommendation (“R&R”), recommending that petitioner’s first habeas petition be dismissed.  
 27 See *Jeronimo-Pablo*, No. C06-1606-RSL, Dkt. 26 (W.D. Wash. 2007). After the R&R was  
 28 issued, petitioner filed a Motion for Lower Bond and Release Consideration. *Id.*, Dkt. 27. The

1 Government opposed the motion, noting that as since his last custody review, petitioner has  
2 been detained without bond, and that the Court lacked authority to lower bond. *Id.*, Dkt. 28.  
3 On May 29, 2007, the Honorable Robert S. Lasnik adopted the R&R, denying petitioner's first  
4 habeas petition, granting the Government's motion to dismiss, and denying petitioner's motion  
5 for lower bond. *Id.*, Dkt 30. Judge Lasnik's order stated that

6 [e]ven if petitioner were entitled to an additional post-custody review, which he is  
7 not as set forth in the Report and Recommendation, the Court lacks authority to  
8 order lower bond or his release. The authority to make those determinations rests  
9 solely with United States Immigration and Customs Enforcement ("ICE"). *See,*  
e.g., *INS v. Ventura*, 537 U.S. 12, 17 (2002); INA § 241(a)(6).

10 *Id.*

11 On December 20, 2007, petitioner filed the instant habeas petition, requesting that the  
12 Court release him under house arrest or on bond in the amount of \$1500. (Dkt. 6). Respondent  
13 has filed a Return Memorandum and Motion to Dismiss. (Dkt. 11). Petitioner did not file a  
14 response. The habeas petition and motion to dismiss are now ready for review.

15 **III. DISCUSSION**

16 Petitioner argues that "the \$5,000 bond imposed on him is excessive and violates his  
17 eighth amendment for release on reasonable bond." (Dkt. 6). Petitioner request that he "be  
18 released under house arrest or in the alternative the bond to be reduced to \$1500." (Dkt. 6).  
19 Respondent argues that the petition appears to be based on the mistaken premise that petitioner  
20 is still eligible for release on \$5,000 bond. Respondent notes that since his last custody review,  
21 petitioner has been detained without bond. (Dkt. 11 at 4). Thus, according to respondent,  
22 petitioner's request is misplaced and moot. Respondent further argues that even if petitioner  
23 was still eligible to post bond, Judge Lasnik already determined that this Court lacks jurisdiction  
24

1 to order his release or lower bond his bond because the discretion to make such decisions has  
 2 been delegated to ICE. *Id.* The Court agrees with respondent that petitioner's request for a  
 3 lower bond is moot.

4 For a federal court to have jurisdiction, "an actual controversy must exist at all stages of  
 5 the litigation." *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1173 (9<sup>th</sup> Cir. 2002).  
 6 "When a controversy no longer exists, the case is moot." *Id.* Because petitioner is detained  
 7 without bond, the Court finds that petitioner's request for a lower bond amount should be  
 8 dismissed as moot. *See, e.g., Cooney v. Edwards*, 971 F.2d 345, 346 (9<sup>th</sup> Cir. 1992) (holding  
 9 that the District Court properly dismissed plaintiff's claims that had become either moot or  
 10 unripe). Moreover, as Judge Lasnik previously held, "the Court lacks authority to order lower  
 11 bond or his release." *Jeronimo-Pablo v. Clark*, No. C06-1606-RSL (W.D. Wash. May 29,  
 12 2007). Accordingly, I recommend that respondent's motion to dismiss be granted, and that this  
 13 action be dismissed with prejudice. A proposed Order accompanies this Report and  
 14 Recommendation.

16 **IV. CONCLUSION**

17 For the foregoing reasons, I recommend that respondent's motion to dismiss be granted,  
 18 and that the action be dismissed. A proposed Order accompanies this Report and  
 19 Recommendation.

20 DATED this 22nd day of April, 2008.

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 23 JAMES P. DONOHUE  
 24 United States Magistrate Judge  
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